Court Historical Society
NEWSLETTER Eastern District of Tennessee

November 2019

Rejected Judicial Titles

Are you familiar with the following judicial titles?

"Assistant United States District Judge."

"Appellate magistrates."

Probably not, because they do not exist. They were once proposed, but they never materialized.

In the minds of many, "Assistant United States District Judge" might accurately describe the position of United States Magistrate Judge.

The title "Assistant United States District Judge" was proposed in the 1990 Federal Courts Study Committee Implementation Act, but it was rejected by the Executive Committee of the Judicial Conference of the United States, which "opposed any formal name change for magistrates," according to "A Guide to the Legislative History of the Federal Magistrate Judges System," published by the Administrative Office of the U.S. Courts.

A couple of years earlier, the Magistrates Committee of the Judicial Conference had endorsed the practice of addressing a magistrate as "Judge" or "Your Honor" in the courtroom. But no official change in title, by way of legislation, was proposed at that time. A subcommittee of the Federal Courts Study Committee suggested, however, that if a change in title were to be made, that "Magistrate Judge" be chosen.

Ultimately, Section 321 of Title III of the Judicial Improvements Act of 1990 changed the title of United States magistrate to "'United States magistrate judge," according to the Guide, and that title remains today.

Now, to the "appellate magistrates" concept.

In 1981, the Magistrates Committee of the Judicial Conference was asked to consider establishing a new class of judicial officers called "appellate magistrates" for the courts of appeals. The primary functions of the new judgeships would be to prepare reports and recommend dispositions in specific categories of appeals and to enter orders on the consolidation of appeals, the

continued on page 2

Working Hard -- Hardly Noticed

The most active person in the courtroom during a court proceeding is the court reporter, but few give much attention to the reporter.

The reporter sits quietly near the witness stand rapidly pressing the silent keys on the Stenotype machine in front of him or her, recording every word spoken during the proceeding – every word, regardless of who says it.

This includes words the reporter might not know how to spell and words they might not have ever heard before. And they must tune out street noises or other noises from outside the courtroom.

Every word. What is involved in this? Knoxville federal court reporter **Rebekah Lockwood** said that she made 67,059 strokes on her Stenotype machine one day recently during the voir dire proceeding of a criminal trial. This would create approximately 260 pages of transcript, she said.

continued on page 2

***Court Reporter Rebekah Lockwood** is shown with some of the vintage Stenotype machines she has collected. (See adjacent close-up photo of one of the machines.)*

Today's Stenotype machines look much like this vintage one–24 unmarked keys. The letters the reporter writes today go into a computer instead of onto a narrow roll of paper, as shown here. Reporters "do not say 'type' in the industry; we say 'write,'" Lockwood said.

Rejected Judicial Titles

continued from page 1

establishment of schedules, and pre-argument conferences.

The Magistrates Committee declined to endorse the concept. "The Committee was concerned about the prospect that an appellate magistrate, as a subordinate judicial officer, might in effect be called upon to review the work of or otherwise 'second-guess' district judges," according to the Guide.

The idea came up again in 1989 in the report of the Federal Courts Study Committee, but the Magistrates Committee "strongly affirmed its opposition to appellate review by 'appellate magistrates'" and the matter was not discussed further.

These are just two of the many title and authority matters that have been dealt with by the Judicial Conference as the magistrate system grew from its beginnings.

***

The magistrate judge system has its roots in the "commissioner" system. The position of commissioner began with the Judiciary Act of 1789, when "the First Congress specified that bail for a person accused of committing a federal crime should be set either by a judge of the United States or by a state magistrate," according to the Guide. Note the word "state."

Four years later, In 1793, Congress authorized the federal circuit courts to appoint "discreet persons learned in the law" to take bail for courts in federal criminal cases. These "discreet persons" were referred to as "commissioners."

A study to change and expand the commissioner system was begun in 1965, and after many Congressional hearings, the Federal Magistrates Act of 1968 was signed into law.
A pilot program was implemented in five districts and the first magistrate took office on May 1, 1969. Nationwide surveys were then conducted to determine the needs of each district court, and then magistrates were authorized for the remaining courts. By July 1, 1970, the U.S. magistrate system had replaced the commissioner system in the federal courts.

*RECALLED–These three retired Eastern District of Tennessee magistrate judges, left to right, **Dennis Inman**, **Bill Carter**, and **Clifford Shirley**, continue to serve the court in "recall" status, Inman and Shirley in the EDTN, and Carter in New York. The "Recall" provision, adopted in 1987, allows a chief district judge, with the consent of the circuit's judicial council, to authorize a magistrate judge to serve in recall status for one-year periods.*
This photo was made by Judge Varlan at Judge Clifton Corker's investiture on November 1.

Working Hard -- Hardly Noticed

continued from page 1

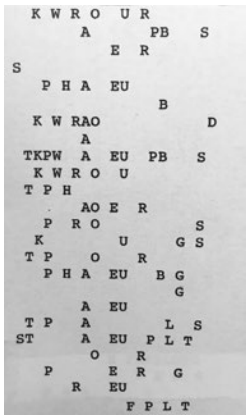
The reporter never speaks during a hearing unless spoken to by the judge or one of the lawyers, who might ask that the reporter read aloud a question or comment made by a lawyer or a witness.

Since the beginning of the federal judicial system, judges and justices have relied on stenographic records of court proceedings. But the recording hasn't always been by an official court reporter.

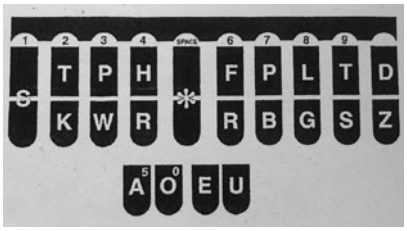
Throughout the 19th century and well into the 20th century, federal trial transcripts were prepared either by trial judges themselves or by private stenographers who were hired and compensated directly by the parties in a case, according to a report by the Federal Judicial Center.

In 1901, a commission chartered by Congress–the Commission to Revise and Codify the Criminal and Penal Laws of the United States–recommended that each district court be permitted to appoint an official stenographer. But Congress declined to do so until 1944, when it amended the Judicial Code to authorize the appointment of a "court reporter" to record "by shorthand or by mechanical means" the proceedings held in open court, the FJC report said.

The shorthand method–pen on paper--is used by very few federal court reporters today. Most of them today, whether private contractors or employed by a court, write on a Stenotype machine to record proceedings, and in most federal courts, it's all digital. The reporter writes on a Stenotype machine, but everything goes into a computer; no paper is involved. The latest method is called real-time court reporting, where the characters written by a reporter are instantly translated and appear in normal, readable text on a computer monitor, tablet, or even a smart phone, much like the closed-captioning we see on a TV screen.



*This is a sample of the letters a court reporter writes. Here's what these say: "**Your answers may be used against you in another prosecution for making a false statement or perjury.**" (The letters F P L T indicate a period.) Each row of letters is considered a stroke.*



The keys of a Stenotype keyboard are blank, but this image shows the arrangement of the letters. Various combinations of letters stroked by the reporter form words and punctuation marks.